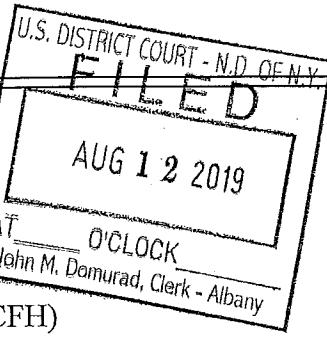


COPY

UNITED STATES DISTRICT COURT

for the

Northern District of New York

UNITED STATES OF AMERICA

v.

SCOTT MCMAHON, M.D.

Defendant

Case No. 1:19-MJ-*SOL* (CFH)

)

)

)

)

)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the dates of December 15, 2018 through and including April 20, 2019, in the counties of Albany and Saratoga in the Northern District of New York, and elsewhere, the defendant violated:

Code Section

21 U.S.C. §§ 846, 841-842

Offense Description

Illegally distributing and dispensing controlled substances for non-medical purposes and outside the usual course of professional practice, and conspiring with others to do so

This criminal complaint is based on these facts:

Please see attached affidavit.

Continued on the attached sheet.

Complainant's signature

DEA Special Agent Frank DeSousa

Printed name and title

Sworn to before me and signed in my presence.

Judge's signature

Date: August 12, 2019

City and State: Albany, New York

Hon. Christian F. Hummel, U.S. Magistrate Judge

Printed name and title

Affidavit in Support of a Criminal Complaint

Special Agent Frank DeSousa, of the Drug Enforcement Administration (DEA), being duly sworn, deposes and states:

Introduction

1. I respectfully make this affidavit in support of a criminal complaint charging Scott McMahon, M.D., ("McMahon"), of Clifton Park, New York, with illegally distributing and dispensing controlled substances for non-medical purposes and outside the usual course of professional practice, and conspiring with others to do so, in violation of 21 U.S.C. §§ 846, 841-842.

2. I have been a Special Agent with the DEA for approximately 18 years. Through my training, education and experience, I have become familiar with the manner in which illegal drugs are transported, stored, and distributed, and with the methods of payment for such drugs and the means with which these payments are transferred to and among drug traffickers. I am also familiar with the use of electronic devices – cell phones, computers, internet and other forms of electronics – by drug traffickers to communicate about drug distribution.

3. I am assigned to the Tactical Diversion Squad at the DEA's Albany District Office. I have received training and acquired experience regarding the diversion of controlled substances by physicians, pharmacists, nurses and other individuals who illegally distribute, sell, prescribe, administer and dispense controlled substances.

4. Based on my training and experience, I know that the lawful distribution of controlled substances must meet certain federal rules and regulations.

- a. Pursuant to Title 21, United States Code, Section 822, controlled substances may be prescribed, dispensed, or distributed only by those persons who are registered

with the Attorney General of the United States to do so (with some exceptions, such as delivery persons). The authority to register persons has been delegated to the DEA by the Attorney General.

- b. Title 21, Code of Federal Regulations, Section 1306.4, sets forth the requirements for a valid prescription. It provides, in pertinent part, that a "prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner[.]"
- c. The Chief of Drug Operations of the DEA Office of Diversion Control, Washington, D.C., has stated that acting within the course of professional practice "includes having an established doctor-patient relationship based upon a medical history, a physical exam and diagnosis." Title 21, United States Code, Section 841(a)(1) makes it an offense for any person to knowingly or intentionally distribute or dispense a controlled substance except as authorized by law.
- d. Based on my training and experience, I know that Title 21, United States Code, Section 841(a)(1) is violated when the physician's authority to prescribe controlled substances is being used not for the treatment of a patient, but for the purpose of assisting in the maintenance of a drug habit or of dispensing controlled substances for other than a legitimate medical purpose.
- e. Distribution of a controlled substance in violation of Title 21, United States Code, Section 841(a)(1) by a medical doctor (often referred to as "diversion") occurs when a doctor knowingly or intentionally prescribes or dispenses a controlled

substance, knowing the drugs were controlled, outside "the usual course of professional practice," namely, not for a legitimate medical purpose.

5. The facts in this affidavit come from my personal observations, my training and experience, my and others' analysis of various categories of records and information, and information obtained from other law enforcement officers and Diversion Investigators at the DEA. The information contained in this affidavit is not an exhaustive account of everything I know about McMahon. Rather, it contains only the facts that I believe are necessary to establish probable cause in support of a criminal complaint.

Basis for a Finding of Probable Cause

6. McMahon, a psychiatrist, is registered under the provisions of the Controlled Substances Act, 21 U.S.C. §§ 822, *et seq.*, as a practitioner and has been assigned a DEA Registration Number for the purpose of handling controlled substances in Schedules II through V. McMahon renewed his DEA registration on or about February 4, 2019, and made his principal place of business an office in Clifton Park. McMahon previously worked at locations in Albany and Saratoga Springs, New York. (While McMahon often travels to Vermont, he is licensed to practice medicine only in New York and officially sees patients only in New York.)

7. Through federal search warrants, DEA has obtained certain text message communications between McMahon and some of his ostensible patients. These text messages, as well as other information discussed below, demonstrate that McMahon is prescribing controlled substances, including Ritalin and its generic equivalents, for non-medical purposes and outside the usual course of professional practice, often with the intent of having his patients kick back a portion of each Ritalin prescription to him for his own personal use.

8. The following conversations¹ occurred between McMahon's phone and a phone belonging to Co-Conspirator A, a resident of Vermont. They demonstrate that McMahon illegally prescribed controlled substances to Co-Conspirator A and to young children of Co-Conspirator A, and that Co-Conspirator A then kicked back some of the prescribed pills to McMahon. The following conversation occurred on December 16, 2018:

Date and approximate time	Sender	Message
12/16/2018 18:56	Co-Conspirator A	Hey doc I was wondering if you could send in my son a rit [Ritalin] script .I ran out n [and] kinda need them for work. If not no biggie
12/16/2018 18:57	Co-Conspirator A	[Juvenile A ²] [birthdate]
12/16/2018 18:57	Co-Conspirator A	It's ok if u can't
12/16/2018 18:57	McMahon	Sure When is your apt [appointment]
12/16/2018 18:57	Co-Conspirator A	Dec 26
12/16/2018 18:58	Co-Conspirator A	Im calling tomorrow
12/16/2018 18:58	McMahon	Same son right
12/16/2018 18:58	Co-Conspirator A	[Juvenile A]
12/16/2018 18:59	Co-Conspirator A	My younger son
12/16/2018 18:59	McMahon	We haven't sent to 2 sons right
12/16/2018 18:59	Co-Conspirator A	No
12/16/2018 18:59	McMahon	Just 1
12/16/2018 18:59	Co-Conspirator A	Yes
12/16/2018 18:59	Co-Conspirator A	Just one

¹ Misspellings, grammatical errors and abbreviations are as in the original text. Where I have interpreted an abbreviation or misspelling based on my training and experience, that interpretation is in hard brackets. Brackets are also used to denote and redact where a person provided personally identifying information, such as a name, birthdate, address or phone number.

² This was the name of one of Co-Conspirator A's children.

Date and approximate time	Sender	Message
12/16/2018 19:00	Co-Conspirator A	[Juvenile B ³] is the one we did last time
12/16/2018 19:00	Co-Conspirator A	So if u think we should use him again do that one
12/16/2018 19:01	McMahon	Yes
12/16/2018 19:01	Co-Conspirator A	Ok
12/16/2018 19:01	Co-Conspirator A	That's fine
12/16/2018 19:02	Co-Conspirator A	[Juvenile B]
12/16/2018 19:03	Co-Conspirator A	[birthdate]
12/16/2018 19:03	Co-Conspirator A	Walgreens bennington
12/16/2018 19:03	Co-Conspirator A	I can also save u some if u need it
12/16/2018 19:04	Co-Conspirator A	Or come by tomorrow
12/16/2018 19:05	Co-Conspirator A	Im gunna pic them up tomorrow
12/16/2018 19:06	Co-Conspirator A	So lmk [let me know] when u send them
12/16/2018 19:36	McMahon	Ok Driving home, arrive around 8:30 then will send Please drop by tomorrow
12/16/2018 19:43	Co-Conspirator A	Ok
12/16/2018 19:43	Co-Conspirator A	Ty [thank you] doc
12/16/2018 22:08	McMahon	Just sent in, had to increase to 3 times a day as last fill was 2.5 weeks ago

According to prescription data, Juvenile B received a prescription for 90 tablets of methylphenidate 20mg (a generic form of Ritalin), issued by McMahon on December 16, 2018, which was filled and sold on December 17, 2018 at a Walgreens in Bennington, VT. The following conversation occurred on December 26, 2018:

³ This was the name of another of Co-Conspirator A's children.

Date and approximate time	Sender	Message
12/26/2018 17:00	Co-Conspirator A	Hey doc I was wondering if if u could squeeze me in tomorrow n i have money I owe u.im dew [due] for all my bups [buprenorphine] n [and] my rits [Ritalin]
12/26/2018 17:01	Co-Conspirator A	N [and] tomorrow is the only time ill have a ride
12/26/2018 17:20	McMahon	Yes Come anytime
12/26/2018 17:21	Co-Conspirator A	Ok ill b there around 1:00
12/26/2018 17:21	Co-Conspirator A	N ty [thank you] so much
12/26/2018 17:41	McMahon	Send in to rite aid in Albany?
12/26/2018 17:42	Co-Conspirator A	Yes 90 bups to rite aid in Albany n the rits to CVS in bennington
12/26/2018 17:42	McMahon	U spare 20 rits
12/26/2018 17:43	Co-Conspirator A	Bc rite aid in Albany has the nasty yellows n yes of course ill give u what ever you need ur my friend not just my doctor
12/26/2018 17:44	Co-Conspirator A	U have to come to bennington later tomorrow afternoon or night
12/26/2018 17:44	Co-Conspirator A	But yes
12/26/2018 17:45	McMahon	You can't pick up and bring to appt
12/26/2018 17:55	Co-Conspirator A	U can send my bups in tonight or tomorrow when I see u but it would be better if u sent it tonight so my ride isn't waiting on me to wait on the pharmacy. N my bups r going to rite aid on western ave 90
12/26/2018 17:56	Co-Conspirator A	Me n my ride r leaving at 11:30 am so ill b there around 1:00

According to prescription data, Co-Conspirator A received a prescription for 120 tablets of methylphenidate 20mg, issued by McMahon, which was filled and sold on December 27, 2018 at a CVS in Bennington. The following conversation occurred on January 4-5, 2019:

Date and approximate time	Sender	Message
1/4/2019 17:47	McMahon	Hey buddy any chance I can grab like a 15 the Ridlen [Ritalin] from you tomorrow
1/4/2019 17:51	Co-Conspirator A	I don't have any

Date and approximate time	Sender	Message
1/4/2019 17:51	Co-Conspirator A	Ashley has them i just picked up her bups [buprenorphine]
1/4/2019 17:51	Co-Conspirator A	and I'm not really sure when I can get up there to give them to her
1/4/2019 17:52	Co-Conspirator A	I'm probably going to be taking the bus in the morning to go give her her bups
1/4/2019 17:52	Co-Conspirator A	Im all out myself
1/4/2019 17:52	Co-Conspirator A	Or i would in a heart beat
1/4/2019 17:53	Co-Conspirator A	U can send in a script for my son. My other son
1/4/2019 17:54	Co-Conspirator A	Lmk [let me know] what you want to do
1/4/2019 20:02	McMahon	What is your other son's name, [Juvenile C ⁴]?
1/4/2019 20:03	McMahon	Where should I send
1/4/2019 22:42	McMahon	What's the deal
1/4/2019 22:46	McMahon	I sent to Walgreens 194 north street
1/4/2019 22:47	McMahon	Under [Juvenile C]
1/4/2019 22:50	Co-Conspirator A	Ill call u in a few minutes
1/5/2019 11:59	McMahon	1:30 work
1/5/2019 12:02	McMahon	I'll give you some \$\$ for rx
1/5/2019 12:08	Co-Conspirator A	More like 300
1/5/2019 12:11	McMahon	Ouch
1/5/2019 12:11	McMahon	Can't do earlier
1/5/2019 12:14	Co-Conspirator A	Also need the cash
1/5/2019 12:14	McMahon	Yupper
1/5/2019 12:15	Co-Conspirator A	Not sure how much it is

According to prescription data, Juvenile C received a prescription for 60 tablets of methylphenidate 20mg, issued by McMahon, which was filled and sold on January 5, 2019 at a CVS in Bennington. The following conversation occurred on January 27, 2019:

⁴ This was the name of another of Co-Conspirator A's children.

Date and approximate time	Sender	Message
1/27/2019 15:40	Co-Conspirator A	Hey doc i was wondering if you could send my son's script in to Hannaford inbennington I got ripped off for 30 rid [Ritalin]. This kid who I thought was my friend I gave him 30 pills and he never came back so now I'm stuck and I have just about nothing so I was hoping you can send my son's prescription and then I'll split it with you
1/27/2019 15:43	Co-Conspirator A	T think last time y sent my son's script in it was 69 or 90
1/27/2019 15:43	Co-Conspirator A	60
1/27/2019 15:44	Co-Conspirator A	If not I understand
1/27/2019 15:44	McMahon	Sure When you coming in Wednesday
1/27/2019 15:44	McMahon	No problem buddy
1/27/2019 15:44	Co-Conspirator A	Yes Wednesday morning
1/27/2019 15:45	McMahon	Give me 20 minutes
1/27/2019 15:45	Co-Conspirator A	The kid that I gave this to has been a friend of mine for 8 years and ripped me off and over it
1/27/2019 15:46	Co-Conspirator A	Ty doc ill pick it up tomorrow n give you half on Monday
1/27/2019 15:47	McMahon	You would come to [McMahon's office] Monday or I need to go to Brno
1/27/2019 15:47	McMahon	Bennington
1/27/2019 15:47	McMahon	You could do appt Monday is what I'm saying
1/27/2019 16:11	Co-Conspirator A	Yes im coming monday
1/27/2019 17:29	McMahon	Call me quick as u can
1/27/2019 17:37	McMahon	Or just let me know what's going on at some point
1/27/2019 17:38	Co-Conspirator A	No I was just around my mom and I didn't want her to hear anything
1/27/2019 17:39	Co-Conspirator A	[Juvenile B] [birthdate]
1/27/2019 17:44	Co-Conspirator A	So if you can send them in tonight I can pick them up tomorrow and then Thursday I'm driving up from my appointment and giving you yours
1/27/2019 17:44	Co-Conspirator A	Half
1/27/2019 17:45	Co-Conspirator A	And thank you dog this helps me out a lot because I have nothing now and now I know not to trust anybody either

Date and approximate time	Sender	Message
1/27/2019 17:45	McMahon	No problem
1/27/2019 17:53	Co-Conspirator A	Cool man ty
1/27/2019 17:55	Co-Conspirator A	I've never fucked u over n never will ty again
1/27/2019 22:17	McMahon	Don't be giving out your pills buddy

According to prescription data, Juvenile B received a prescription for 60 tablets of methylphenidate 20mg, issued by McMahon, which was filled and sold on January 28, 2019 at a Walgreens in Bennington. The following conversation occurred on February 2, 2019:

Date and approximate time	Sender	Message
2/2/2019 14:55	McMahon	Give me a call when u get a chance Low on rit [Ritalin]
2/2/2019 16:05	Co-Conspirator A	Im with my father I'll call you in a half hour or so can't really talk right now if you get what I mean
2/2/2019 16:05	McMahon	Ok
2/2/2019 16:06	McMahon	Can I get some rit from you? I'm in Albany could swing over late
2/2/2019 16:15	Co-Conspirator A	Im out but you could call in my other Sons prescription [Juvenile C] to the CVS his birthday is [birthdate]
2/2/2019 16:15	McMahon	Your out? No way
2/2/2019 16:15	Co-Conspirator A	I would give you half or more
2/2/2019 16:16	McMahon	Supposed to get half from the others Your bs around
2/2/2019 16:16	McMahon	Please try to make appt Monday
2/2/2019 16:19	Co-Conspirator A	Im calling everyone I know ill make it
2/2/2019 16:19	McMahon	Unfortunately its getting harder and harder to believe you
2/2/2019 16:22	Co-Conspirator A	I have no car so it's hard
2/2/2019 16:22	Co-Conspirator A	I've always been cool with u
2/2/2019 16:23	Co-Conspirator A	I u have to kick me off I understand

Date and approximate time	Sender	Message
2/2/2019 16:23	McMahon	We were supposed to split the last rits, and you've missed a shit ton of apt [appointments]
2/2/2019 16:25	Co-Conspirator A	Im gunna make it Monday
2/2/2019 16:25	Co-Conspirator A	Im sorry
2/2/2019 16:25	McMahon	Called script in for you Wednesday you said you would come with Ashley for appt and split
2/2/2019 16:25	McMahon	Screwed me
2/2/2019 16:26	Co-Conspirator A	I had to deal with the probation shit im so sorry doc
2/2/2019 16:26	Co-Conspirator A	I would never intentionally screw you you know that you're my friend I just been going through some s*** I'm trying everything I can to make sure I get there Monday believe that
2/2/2019 16:28	McMahon	I just feel like your saying things to please people You promised me if I sent the rx in you would come with Ashley
2/2/2019 16:28	McMahon	I just don't know what to believe
2/2/2019 16:28	Co-Conspirator A	I didn't have a choice at the time that's the truth
2/2/2019 16:29	McMahon	You could have saved half of the rits
2/2/2019 16:29	McMahon	Don't give me that bs
2/2/2019 16:30	Co-Conspirator A	I did them yes but I thought i have u some two weeks ago
2/2/2019 16:31	McMahon	Then don't lie to me
2/2/2019 16:31	McMahon	You specifically told me one thing
2/2/2019 16:32	Co-Conspirator A	I'll do what I have to do to make it right just tell me what I have to do to make it right. I'm so sorry
2/2/2019 16:32	Co-Conspirator A	And if I can't make it right then I understand if you have to kick me off your program
2/2/2019 16:33	McMahon	Make it Monday or Tuesday
2/2/2019 16:36	Co-Conspirator A	Done
2/2/2019 16:36	McMahon	Keep your promises Don't tell me to send in a script that you will split with me and then screw me That is just crap
2/2/2019 16:36	Co-Conspirator A	I understand

9. The following conversations occurred between McMahon's phone and a phone belonging to Co-Conspirator B, a resident of Vermont. They demonstrate that McMahon illegally prescribed controlled substances to Co-Conspirator B, and that Co-Conspirator B then kicked back some of the pills to McMahon. The following conversation occurred on December 15, 2018:

Date and approximate time	Sender	Message
12/15/2018 10:40	McMahon	Give me a call if you are get a chance I want to run some by you
12/15/2018 10:54	McMahon	Didn't know if you wanted to split a rx [prescription] of energy tabs/rits [Ritalin]
12/15/2018 11:12	Co-Conspirator B	Hey what's up beother
12/15/2018 11:19	Co-Conspirator B	I tried to call you I what are you up to man you probably in and out of service
12/15/2018 13:23	McMahon	Hey we're up at the land I wasn't able to call prescription in yet
12/15/2018 13:41	McMahon	Just sent rx Into rite aid in Ludlow
12/15/2018 14:05	Co-Conspirator B	Okay I'll swing down and grab it do you know how much it is
12/15/2018 14:07	McMahon	Don't I'll pay you If you have VT medicaid \$2

According to prescription data, Co-Conspirator B received a prescription for 60 tablets of methylphenidate 20mg, issued by McMahon, which was filled and sold on December 15, 2018 at a Rite Aid in Ludlow, VT. The following conversation occurred on December 19-20, 2018:

Date and approximate time	Sender	Message
12/19/2018 20:16	McMahon	Give me a call tonight when u get a chance
12/19/2018 20:16	Co-Conspirator B	Ok I'm letting my phone charge then I will did u send to cvs
12/19/2018 20:48	McMahon	Sent to wrong pharmacy earlier, just resent to cvs
12/19/2018 20:49	McMahon	Can u call
12/19/2018 20:49	McMahon	Me
12/19/2018 21:03	McMahon	Hey buddy I need to speak with you ASAP

Date and approximate time	Sender	Message
12/19/2018 21:06	McMahon	I want to ask a huge favor I didn't know if I can run over tomorrow morning and get some of those Rits [Ritalin]
12/19/2018 21:07	McMahon	I've been working until two 3 AM every night this week covered for this other doctor got 2800 pts [patients]
12/19/2018 21:22	McMahon	Lmk if I can meet you around 8am, in Rutland?
12/19/2018 21:22	Co-Conspirator B	Yeah I'll talk to my mother I'll try to get there early as I can what time do you get in
12/19/2018 21:25	McMahon	Thanks man Really appreciate it
12/20/2018 7:01	McMahon	Still on for morning apt
12/20/2018 8:24	McMahon	Hey u coming in early
12/20/2018 8:26	McMahon	LMK [let me know] ok
12/20/2018 8:46	McMahon	Talk to me
12/20/2018 8:46	McMahon	Can u pay \$100
12/20/2018 8:47	McMahon	I will let staff know
12/20/2018 8:55	McMahon	Hey buddy please let me know if you're on your way where you're at OK
12/20/2018 9:01	McMahon	WhAts going on
12/20/2018 9:24	McMahon	Talk to me, they are getting on me about pts not having screens every month, and trying to reduce the fee for you
12/20/2018 9:58	McMahon	[Co-Conspirator B] I really need to hear from you
12/20/2018 10:07	McMahon	Lmk What's going on please
12/20/2018 11:06	McMahon	Wtf [Co-Conspirator B]
12/20/2018 11:07	McMahon	I need a drug screen on you by the end of the week or they are going to discharge you from the Suboxone program
12/20/2018 11:08	McMahon	They have been going thru records as it's end of new year

Date and approximate time	Sender	Message
12/20/2018 11:27	Co-Conspirator B	I'm on my way now my mother couldn't do it until now so we're heading that way
12/20/2018 11:31	McMahon	Phewww
12/20/2018 11:33	Co-Conspirator B	Sorry man I didn't have no service at the house
12/20/2018 11:35	Co-Conspirator B	Should I just go over to the pharmacy first over there to get those and then come to you
12/20/2018 11:55	McMahon	Sent Ritalin 20mg three times a day to rite aid 1225 western avenue. Called pharmacy and they will fill, told them u lost it hunting
12/20/2018 11:57	Co-Conspirator B	Cool
12/20/2018 12:35	McMahon	Where are you? Have new pt at 1pm
12/20/2018 13:15	Co-Conspirator B	I May have to come see you first they said cost was \$116 to fill after I get gas I'm gonna be short is that ok
12/20/2018 13:15	Co-Conspirator B	Even if u had \$50 that will work I have the rest
12/20/2018 13:16	McMahon	I'll have to go to bank quick
12/20/2018 13:16	McMahon	Come here first
12/20/2018 13:16	Co-Conspirator B	Ok
12/20/2018 13:39	McMahon	You here?
12/20/2018 13:40	Co-Conspirator B	Not yet traffic is a lol crazy
12/20/2018 13:40	McMahon	How far
12/20/2018 13:41	McMahon	Away
12/20/2018 13:42	Co-Conspirator B	There is an crash where u get on interstate were moving about 5 miles an hr hopefully not long
12/20/2018 13:42	McMahon	Like 5 minutes
12/20/2018 13:42	McMahon	Trying to plan

Date and approximate time	Sender	Message
12/20/2018 13:44	Co-Conspirator B	We've mover a mile or 2 in the last 20 mins looks like an accident I can text ya when we're 5 mins out
12/20/2018 13:58	McMahon	Close?
12/20/2018 13:59	Co-Conspirator B	Still moving slow there re directing traffic shouldn't be long
12/20/2018 14:27	McMahon	Where r u
12/20/2018 14:31	McMahon	I'm running out to the bank right now
12/20/2018 14:33	Co-Conspirator B	I think we just past ext 15 traffick is fucking slow but it'd picking up now I can msg you when I'm 10 mins out shouldn't be long brother
12/20/2018 14:33	McMahon	Holy shit You kidding me
12/20/2018 14:33	Co-Conspirator B	If we gotta we can meet in bathroom or whatever
12/20/2018 14:34	Co-Conspirator B	Tell me about man they were re directing traffic
12/20/2018 14:47	Co-Conspirator B	I'll let ya know when almost there maybe we can meet inside I don't want my my husband to wonder I'm just gonna say I have to piss
12/20/2018 14:48	McMahon	Your going to have to go to pharmacy and come back
12/20/2018 14:48	McMahon	That's fine, as long as u go to pharmacy and come right back
12/20/2018 14:49	Co-Conspirator B	Yea that's fine I just didn't want him to see me meeting somebody off of a diff exit and u want me to meet you back at that store or office
12/20/2018 15:11	Co-Conspirator B	!he fucking missed 4 wanna go to 3
12/20/2018 15:11	McMahon	Go to office
12/20/2018 15:11	Co-Conspirator B	Ok
12/20/2018 15:11	Co-Conspirator B	Or meet at 5 guys
12/20/2018 15:11	McMahon	Go to office
12/20/2018 15:12	Co-Conspirator B	Ok

Date and approximate time	Sender	Message
12/20/2018 15:15	Co-Conspirator B	Want me to wait in parking lot for you
12/20/2018 15:15	McMahon	Come in
12/20/2018 15:16	McMahon	Where r u
12/20/2018 15:17	Co-Conspirator B	Turning at lite now
12/20/2018 15:17	Co-Conspirator B	Already passed five guys
12/20/2018 15:18	McMahon	Come into entrance of building Illl give you \$100 go to pharmacy Then. Come back and do visit, urine screen
12/20/2018 15:18	Co-Conspirator B	Ok here
12/20/2018 15:20	Co-Conspirator B	Are u here or pulling in
12/20/2018 15:43	Co-Conspirator B	I'm back
12/20/2018 16:02	Co-Conspirator B	I left sample on desk brother thanks man if i don't see ya merry Xmas

According to prescription data, Co-Conspirator B received a prescription for 90 tablets of methylphenidate 20mg, issued by McMahon, which was filled and sold on December 20, 2018 at a Rite Aid in Albany, NY.

10. The below conversations occurred between McMahon's phone and a phone belonging to Co-Conspirator C, a resident of Saratoga County, New York. They demonstrate that McMahon prescribed controlled substances to Co-Conspirator C, and that Co-Conspirator C then kicked back some of the pills to McMahon, often by leaving them on the porch of Co-Conspirator C's residence in Saratoga County. In one instance, on April 20, 2019, McMahon prescribed controlled substances to Co-Conspirator C's boyfriend, who was not his patient. The following conversation occurred on December 31, 2018:

Date and approximate time	Sender	Message
12/31/2018 11:23	Co-Conspirator C	Hey I could really use some help if you could send the scripts in again to [a pharmacy]. Or if you sent them somewhere else please let me know where. Thanks!
12/31/2018 12:14	McMahon	Just saw Sending now
12/31/2018 12:30	McMahon	Can we meet today
12/31/2018 12:36	McMahon	Or do the porch think
12/31/2018 12:36	McMahon	Thing
12/31/2018 12:38	McMahon	Ok Both sent to [a pharmacy]
12/31/2018 12:38	Co-Conspirator C	Yes definitely. I should be able to leave soon to get it and get back here by like 3:00. Just don't come at 5:00 cuz my ex is picking my son up then.
12/31/2018 12:39	Co-Conspirator C	But let's plan on the porch deal.
12/31/2018 12:39	McMahon	Plan on between 2-3 then
12/31/2018 12:50	McMahon	Sound good

According to prescription data, Co-Conspirator C received a prescription for 105 tablets of methylphenidate 20mg, issued by McMahon, which was filled and sold on December 31, 2018 at a pharmacy in Ballston Spa, NY. The following conversation occurred on January 29, 2019:

Date and approximate time	Sender	Message
1/29/2019 16:48	Co-Conspirator C	Hey Doc. Hope you're doing okay. Got my insurance back. Aren't I due for a refill?
1/29/2019 17:22	McMahon	Yeah baby
1/29/2019 17:46	McMahon	Same insurance or different?
1/29/2019 17:51	Co-Conspirator C	Same.
1/29/2019 17:51	Co-Conspirator C	R u calling in now? The roads are so bad I don't want to have to head out again.
1/29/2019 17:52	McMahon	Do you want me to call now I'm not sure what you're saying
1/29/2019 17:53	McMahon	I can wait if you can wait but if you want me to I can do it now
1/29/2019 17:55	Co-Conspirator C	Yes please. [Pharmacy]. I'm at daycare pickup in BSpa.
1/29/2019 17:55	McMahon	Ok

Date and approximate time	Sender	Message
1/29/2019 17:58	McMahon	Ok Just sent
1/29/2019 19:19	McMahon	Everything go through OK
1/29/2019 19:21	McMahon	I wanted to talk to you about setting up an appointment at [McMahon's office] just to get you on the books
1/29/2019 19:24	McMahon	I didn't know if you're home or not but I'm just leaving [McMahon's office] now I don't know if we could I do the porch thing tonight
1/29/2019 19:35	Co-Conspirator C	Yes!!!!
1/29/2019 19:36	Co-Conspirator C	I'll get it ready
1/29/2019 19:36	McMahon	Sweet you're the best
1/29/2019 19:43	Co-Conspirator C	I can come to [McMahon's office]. Just got COBRA yesterday and it isn't thru the system yet. I'll let you know when it's good
1/29/2019 19:47	McMahon	Great

According to prescription data, Co-Conspirator C received a prescription for 105 tablets of methylphenidate 20mg, issued by McMahon, which was filled and sold on January 29, 2019 at a pharmacy in Ballston Spa. The following conversation occurred on February 26, 2019:

Date and approximate time	Sender	Message
2/26/2019 14:31	Co-Conspirator C	Time for rits [Ritalin]?
2/26/2019 15:23	McMahon	I can send is it
2/26/2019 17:26	Co-Conspirator C	Nice!
2/26/2019 18:02	McMahon	Any luck
2/26/2019 18:26	McMahon	Wat up
2/26/2019 19:10	Co-Conspirator C	We in bizness
2/26/2019 19:10	Co-Conspirator C	You want tomorrow AM?
2/26/2019 19:11	McMahon	I'm in Saratoga now I can swing by your place is that cool

According to prescription data, Co-Conspirator C received a prescription for 105 tablets of methylphenidate 20mg, issued by McMahon, which was filled and sold on February 26, 2019 at a pharmacy in Ballston Spa. The following conversation occurred on April 19-20, 2019:

Date and approximate time	Sender	Message
4/19/2019 7:56	Co-Conspirator C	Hey, if my BF [boyfriend] wants to see you is there any way he could get a reduced fee initial visit?
4/19/2019 9:12	McMahon	Not really, nothing personal I'll let you know about the rit's [Ritalin]
4/19/2019 9:14	Co-Conspirator C	kk I get it. I'm paying so I figured I'd ask. LOL
4/19/2019 9:28	Co-Conspirator C	I'm in a conference call. Call ya right back!
4/19/2019 9:46	McMahon	Are you almost done I just got a brief bit of time before I've got to start seeing a bunch of people
4/19/2019 9:47	Co-Conspirator C	Should I drive there?
4/19/2019 9:47	Co-Conspirator C	I just have to stay on the call so can't talk but I can drive
4/19/2019 9:48	McMahon	My Ridellan [Ritalin] fell through, I could send some in. Under your boyfriend's name if you give me his name date of birth address and phone number
4/19/2019 9:49	McMahon	Then you could come to the office with him I could do them as a follow up appointment \$75 I could really use some to
4/19/2019 9:54	Co-Conspirator C	Kk
4/19/2019 9:54	Co-Conspirator C	[Boyfriend's name]
4/19/2019 9:55	Co-Conspirator C	[Boyfriend's birthdate]
4/19/2019 9:55	Co-Conspirator C	[Boyfriend's address]
4/19/2019 9:55	Co-Conspirator C	[Boyfriend's phone number]
4/19/2019 9:55	Co-Conspirator C	CVS in Latham
4/19/2019 9:55	Co-Conspirator C	750 New Loudon Rd.
4/19/2019 10:05	Co-Conspirator C	OMG he's saying no now. Fucking hell.
4/19/2019 15:04	Co-Conspirator C	Let me know if you sent it. He waffles back and forth. Please just

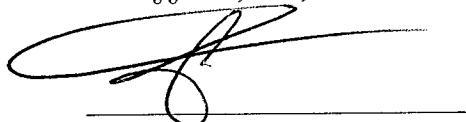
Date and approximate time	Sender	Message
4/19/2019 15:04	Co-Conspirator C	give me or him a sedative.
4/19/2019 19:32	McMahon	I did not
4/19/2019 20:36	Co-Conspirator C	Did you want or need to or no?
4/20/2019 6:02	McMahon	If you want me to send I can
4/20/2019 9:46	McMahon	Lmk [let me know]
4/20/2019 10:32	Co-Conspirator C	Yes please!
4/20/2019 12:29	McMahon	Send to which pharmacy
4/20/2019 12:37	Co-Conspirator C	CVS Saratoga please
4/20/2019 12:38	Co-Conspirator C	34 Congress St, Saratoga Springs, NY 12866
4/20/2019 12:39	Co-Conspirator C	5185873098
4/20/2019 13:07	Co-Conspirator C	Please let me know when done.
4/20/2019 13:33	Co-Conspirator C	Doc?
4/20/2019 13:34	Co-Conspirator C	On a bit of a time crunch here
4/20/2019 14:02	McMahon	Sending now Save me some
4/20/2019 14:03	Co-Conspirator C	Of course sir!
4/20/2019 14:10	McMahon	Just sent Ritalin 20 mg TID,#90
4/20/2019 14:18	McMahon	Will be driving up to Lake George around 3 o'clock so if I could meet you somewhere that be great
4/20/2019 14:28	Co-Conspirator C	He's supposed to pick it up and come here. I could meet you after that but I'm not sure what time.
4/20/2019 14:28	Co-Conspirator C	My place is off limits though
4/20/2019 14:31	Co-Conspirator C	Hey was supposed to be Saratoga CVD
4/20/2019 14:31	Co-Conspirator C	CVS
4/20/2019 14:32	Co-Conspirator C	I gotta jump in the shower
4/20/2019 14:32	Co-Conspirator C	Running late
4/20/2019 14:36	Co-Conspirator C	My mom is watching my son at my house.

Date and approximate time	Sender	Message
4/20/2019 15:14	McMahon	I need to resend
4/20/2019 15:22	McMahon	I resent to cvs Saratoga
4/20/2019 15:22	McMahon	Ok
4/20/2019 16:13	McMahon	What's the story
4/20/2019 16:20	Co-Conspirator C	Where are you now?
4/20/2019 16:20	Co-Conspirator C	I can meet you in about thirty mins in Saratoga?
4/20/2019 16:21	Co-Conspirator C	If not will be later cuz I have a photo shoot.
4/20/2019 16:24	McMahon	No, Saratoga, somewhere near exit 15
4/20/2019 16:24	McMahon	I'm leaving Clifton Park now
4/20/2019 17:01	Co-Conspirator C	I'm here
4/20/2019 17:01	Co-Conspirator C	It's Sunoco A plus
4/20/2019 17:02	McMahon	I'm 13a

According to prescription data, Co-Conspirator C's boyfriend received a prescription for 90 tablets of methylphenidate 20mg, issued by McMahon, which was filled and sold on April 20, 2019 at a CVS in Latham, NY.

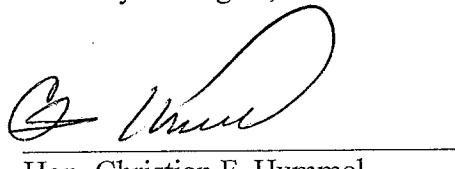
Conclusion

11. I respectfully submit that this affidavit supports probable cause for a criminal complaint charging Scott McMahon, M.D., with illegally distributing and dispensing controlled substances for non-medical purposes and outside the usual course of professional practice, and conspiring with others to do so, in violation of 21 U.S.C. §§ 846, 841, 842.



Frank DeSousa
Special Agent
Drug Enforcement Administration

Sworn to before me this
12th day of August, 2019



Hon. Christian F. Hummel
United States Magistrate Judge